

NO. 5:20-HC-2110-FL

ORDER

COURT'S DISCUSSION

(1) at the time of the conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333–34 (4th Cir. 2000).


Petitioner cannot show that the “substantive law changed such that the conduct of which [he] was convicted is deemed not to be criminal.” Id. Based on the current record, Rehaif does not establish that petitioner's unlawful possession of a firearm is no longer criminal. See Greer v. United States, 141 S. Ct. 2090, 2097 (2021); see also Rainner v. Warden FCI Bennettsville, 858 F. App'x 66 (4th Cir. 2021). Accordingly, the court lacks jurisdiction to consider petitioner's claim.

Petitioner's Rehaif claim also is procedurally defaulted where he did not assert the claim during the underlying criminal proceedings or on direct appeal. Massarro v. United States, 538 U.S. 500, 504 (2003); see United States v. Buck, No. 2:08-CR-369-PBT (E.D. Pa.); United States v. Buck, No. 09-410 (3d Cir.). And where petitioner did not respond to the motion to dismiss or attempt to explain his procedural default in the petition itself, he has failed to establish grounds for excusing his default. See Bousley v. United States, 523 U.S. 614, 622 (1998).

CONCLUSION

Based on the foregoing, respondent's motions to dismiss (DE 13) and to seal (DE 16) are GRANTED, and petitioner's claims are DISMISSED without prejudice. A certificate of appealability is DENIED. The clerk is DIRECTED to maintain docket entry 15 under seal, and to close this case.

SO ORDERED, this the 31st day of March, 2022.



LOUISE W. FLANAGAN
United States District Judge